

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AIR VENT, INC.,

Plaintiff,

v.

OWENS CORNING CORPORATION,
Defendant.

Civil Action No.

Jury Trial Demanded

6482084
6793574

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Air Vent, Inc. ("Plaintiff"), by its attorneys, Tucker Arensberg, P.C. and Lippes Mathias Wexler Friedman LLP, for its Complaint against defendant Owens Corning Corporation ("Defendant"), alleges as follows:

I. THE PARTIES

1. Plaintiff is a Delaware corporation, having a principal place of business at 4117 Pinnacle Point Drive, Suite 400, Dallas, Texas 75211.

2. Plaintiff is the owner by assignment of United States Patents Nos. 6,299,528 ("the '528 Patent"), entitled "End-Ventilating Adjustable Pitch Arcuate Roof Ventilator," issued October 9, 2001; 6,482,084 ("the '084 Patent"), entitled "End-Ventilating Adjustable Pitch Arcuate Roof Ventilator," issued November 19, 2002; and 6,793,574 ("the '574 Patent"), entitled "Vent With Presecured Mechanical Fasteners," issued September 21, 2004 (collectively "Patents-in-Suit").

3. Plaintiff is in the business and is a market leader, *inter alia*, of manufacturing and selling building construction products, including without limitation, roof ridge ventilators ("ridge vents"), certain of which are sold under the name and trademark "ShingleVent® II," which product is covered by and marked with the numbers of the '528 Patent and the '084 Patent.

4. On information and belief, Defendant is a Delaware corporation, having a principal place of business at One Owens Corning Parkway, Toledo, Ohio 43659.

5. Defendant is engaged in the business of manufacturing and selling residential and commercial building materials, including the business of offering and selling within the United States ridge vent products for providing roof ventilation as set forth in one or more claims of the Patents-in-Suit.

II. JURISDICTION AND VENUE

6. This action arises under the Patent Laws of the United States, Title 35 United States Code §§ 1 *et seq.*

7. Venue is proper in this District pursuant to 28 United States Code § 1400(b).

III. FACTUAL BACKGROUND

8. From 2000 through 2008 Plaintiff manufactured for and sold to Defendant a four foot version of a ridge vent product under the name "VentSure Rigid Strip" that was substantially the same structurally and functionally as the ShingleVent II. In late January 2009, Defendant notified Plaintiff that it was terminating its contractual relationship with Plaintiff for the purchase of ridge vent products that Plaintiff had been selling to Defendant. Defendant received its last units of Plaintiff's ridge vent product in March 2009.

9. Plaintiff first became concerned with Defendant's new VentSure ridge vent product in June 2010, when Defendant participated along with Plaintiff and other ridge vent manufactures and suppliers in an auction conducted by Menard, Inc., a large home improvement supply chain with headquarters in Eau Claire, Wisconsin, for 100,000 pieces of ridge vent product. At that time, Defendant significantly underbid the competition, including Plaintiff, and

won the order. Since that time Defendant has continued to aggressively market and sell the VentSure ridge vent product.

10. On or about September of 2010 Plaintiff's lead engineer obtained a sample of the VentSure's ridge vent product, carefully examined it and turned the matter over to legal counsel.

11. It has been determined upon examination of the VentSure ridge vent product, that this product incorporates the same ventilation technology disclosed and claimed in the Patents-in-Suit. In particular, the VentSure product embodies the same concept of a circuitous path of air flow through two parallel tabs between the interior of a roof and the outside ambient as disclosed and claimed in Plaintiff's '528 and '084 Patents. In addition, the VentSure product incorporates tubular passageways for presecuring nails or other fasteners and is sold together with special nails provided with the product that are designed to presecure the nails in the VentSure roof ridge product prior to its installation on a roof, which would contribute to and induce infringement of Plaintiff's '574 Patent by purchasers and users of this product.

12. Defendant, by reason of its prior knowledge of the construction and proprietary nature of the ShingleVent II product, and the substantially identical ridge vent product that Plaintiff manufactured for it under its prior agreement, knew or had reason to believe that its VentSure ridge vent product infringed Plaintiff's '528 and '084 Patents. By reason of Defendant's business relationship with Plaintiff, Defendant knew or had reason to know of Plaintiff's '574 Patent and that its VentSure product would contribute to or cause inducement of infringement of that patent when sold with nails for presecurement therein. Despite this knowledge, Defendant willfully and in bad faith offers to sell, has sold and continues to sell the infringing VentSure ridge vent product.

IV. COUNT 1: INFRINGEMENT OF THE '528 PATENT

13. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 12 as if fully set forth herein.

14. Defendant's aforesaid activities constitute infringement, inducement of infringement and/or contributory infringement of the '528 Patent. Upon information and belief, Defendant will continue to infringe the '528 Patent unless enjoined by this Court.

15. As a result of Defendant's infringing conduct, Plaintiff has been irreparably damaged to an extent not yet determined and Plaintiff will continue to be irreparably damaged by such acts in the future unless Defendant is enjoined by this Court from further acts of infringement.

16. Plaintiff is entitled to recover damages in an amount that adequately compensates it for Defendant's willful infringement, which damages should be increased up to three times the amount found or assessed.

V. COUNT 2: INFRINGEMENT OF THE '084 PATENT

17. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 16 as if fully set forth herein.

18. Defendant's aforesaid activities constitute infringement, inducement of infringement and/or contributory infringement of the '084 Patent. Upon information and belief, Defendant will continue to infringe the '084 Patent unless enjoined by this Court.

19. As a result of Defendant's infringing conduct, Plaintiff has been irreparably damaged to an extent not yet determined and Plaintiff will continue to be irreparably damaged by such acts in the future unless Defendant is enjoined by this Court from further acts of infringement.

20. Plaintiff is entitled to recover damages in an amount that adequately compensates it for Defendant's willful infringement, which damages should be increased up to three times the amount found or assessed.

VI. COUNT 3: INFRINGEMENT OF THE '574 PATENT

21. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 20 as if fully set forth herein.

22. Defendant's aforesaid activities constitute infringement, inducement of infringement and/or contributory infringement of the '574 Patent. Upon information and belief, Defendant will continue to infringe the '574 Patent unless enjoined by this Court.

23. As a result of Defendant's infringing conduct, Plaintiff has been irreparably damaged to an extent not yet determined and Plaintiff will continue to be irreparably damaged by such acts in the future unless Defendant is enjoined by this Court from further acts of infringement.

24. Plaintiff is entitled to recover damages in an amount that adequately compensates it for Defendant's willful infringement, which damages should be increased up to three times the amount found or assessed.

WHEREFORE, Plaintiff prays for a judgment against Defendant Owens Corning Corporation as follows:

(a) That Defendant be adjudged to have infringed, induced others to infringe and/or committed acts of contributory infringement with respect to U.S. Patents Nos. 6,299,528, 6,482,084 and 6,793,574, and each of them, by making or having made, offering to sell and selling its VentSure ridge vent product, and that said infringement be declared willful;

(b) That Defendant, its officers, agents, servants, employees, parent corporations, subsidiaries, divisions, affiliates, successors, and all others in active concert or participation with it or acting on its behalf, be preliminarily and permanently enjoined from further infringement of said patents;

(c) That Defendant be ordered to account for and pay to Plaintiff all damages caused to said Plaintiff by reason of Defendant's infringement of said U.S. Patents Nos. 6,299,528, 6,482,084 and 6,793,574, and each of them, pursuant to 35 U.S.C. § 284, including enhanced damages for willful infringement;

(d) That Plaintiff be granted prejudgment interest on the damages caused to it by reason of Defendant's infringement of said U.S. Patents Nos. 6,299,528, 6,482,084 and 6,793,574, and each of them;

(e) Determining that this is an exceptional case, pursuant to 35 U.S.C. § 285, and awarding Plaintiff its attorney fees; and

(f) Granting Plaintiff such other and further relief as the Court may find just and equitable to remedy such infringement.

VII. DEMAND FOR JURY TRIAL

Pursuant to Rule 38, Fed. R. Civ. P., Plaintiff demands a jury trial for all issues triable as of right by a jury in this case.

December 17, 2010

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Attorneys for Plaintiff

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court _____ EDPA _____ on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 10-7362	DATE FILED 12-17-2010	U.S. DISTRICT COURT EDPA Clerk's Office Room 2609, 601 Market St. Philadelphia, PA 19106
PLAINTIFF Woodstream Corporation		DEFENDANT Kassouni Manufacturing, Inc.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 7,188,448 B2	Mar. 13 2007	Woodstream Corporation
2		
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In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Michael E. Kunz	(BY) DEPUTY CLERK	DATE 12-17-2010
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court Northern District of New York on the following

☐ Trademarks or ☒ Patents. (☐ the patent action involves 35 U.S.C. § 292.);

DOCKET NO. 1:09-cv-071	DATE FILED 1/21/2009	U.S. DISTRICT COURT Northern District of New York
PLAINTIFF The Research Foundation of State University of New York		DEFENDANT Bruker Corporation f/k/a Bruker Biosciences Corporation, et al.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 US 6,831,459 B2	12/14/2004	The Research Foundation of State University of New York
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In the above—entitled case, the following patent(s)/ trademark(s) have been included:

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PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT Stipulation and Order of Dismissal was filed 12/10/2010.

CLERK LAWRENCE K. BAERMAN	(BY) DEPUTY CLERK 	DATE 12/20/2010
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy